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CITY CLERK DEPT.

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July 3, 2019

Clerk of the City of Phoenix
City Clerk Department
200 W. Washington Street, 15th Floor
Phoenix, AZ 85003

Via CMRRR No. 7016 0340 0000 8416 8387; Fax to (602) 495-5847; and Personal Service

Re: April 7, 2019 Motor Vehicle Collision
Notice of Claim for Wrongful Death/Survival

Dear Sir/Madam:

Please be advised that our firm, along with Gowan Elizondo, LLP, has been retained to represent Claimant, [REDACTED] wrongful death/survival beneficiary and claimant of [REDACTED], deceased, regarding the motor vehicle collision involving a Phoenix Fire Department truck that occurred on April 7, 2019, which ultimately resulted in the deaths of [REDACTED] ("subject incident").

We have previously sent your office a preservation letter and hereby reiterate our demand to preserve all relevant evidence.

This letter is intended to serve as a Notice of Claim filing against the City of Phoenix, Phoenix Fire Department, and [REDACTED] in accordance with Arizona Revised Statutes § 12-821.01 regarding [REDACTED] claims relating to the death of her [REDACTED]. This notice is made by [REDACTED] on her behalf and as the statutory beneficiary who will serve as the named Plaintiff on behalf of all other statutory beneficiaries. An additional Notice of Claim relating to the death [REDACTED] (also known to the family as [REDACTED]) will be forthcoming.

Background Facts

On April 7, 2019, [REDACTED] was driving his vehicle on Bethany Home Road near 29th Avenue in Phoenix, Arizona with his girlfriend, [REDACTED] and their [REDACTED] in the car. At the same time, Phoenix Fire Department employees (whose names are unknown at this time) were driving a Phoenix Fire Department engine on the same road. Upon information and belief, the Phoenix Fire Department Engine involved in the subject incident was Engine No. 18 and the driver of the Engine was [REDACTED].

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While we have yet to receive the police report or any investigative material from the Phoenix Fire Department or Phoenix Police Department, it is our understanding [REDACTED] negligently drove the Phoenix Fire Department truck, and violently collided into [REDACTED] vehicle at or near the intersection of 29th Avenue and Bethany Home Road, causing the fire engine to roll several times and throwing the Decedents' vehicle across the road. [REDACTED] was pronounced dead at the scene, while [REDACTED] and their child were taken to separate hospitals, suffered as they struggled for life, and then passed away.

Basis of Liability Against City of Phoenix

At this time, it is our clients' position and claim that the Phoenix Fire Department and its employee-driver of the fire engine involved in the subject incident were negligent and that negligence caused the deaths of these three individuals, and resulting injuries to their family members. This negligence includes, but is not limited to, failing to safely, prudently, and reasonably operate the fire truck, driving the fire truck at an unreasonably high rate of speed, violating the Arizona Motor Vehicle Code, failing to make any evasive action, negligent hiring, retention, supervision, training and entrustment, and ratification. Phoenix Fire Department and/or City of Phoenix is also liable under the theory of *respondeat superior*, as the Phoenix Fire Firefighters involved in the subject incident, including [REDACTED], were in the course and scope of their employment and carrying out duties for the Phoenix Fire Department and the City of Phoenix.

In a press conference following her swearing in, Phoenix Fire Department Chief Kara Kalkbrenner stated that the Phoenix Fire Department has an "emergency response system that represents the second largest fire department in the Nation, second only to the New York City."¹ According to the City of Phoenix website, the Phoenix Fire Department "currently has 57 fire stations . . . 8 battalions. . . and 65 engine companies."² A Fire Department of this size, supervising thousands of fire fighters and employees, with access to a multimillion-dollar budget, has the ability and duty to provide its services to the community in a way that does not threaten the safety of civilians.

This duty includes operating its Fire Engines in a safe, prudent, and reasonable manner on public roads. Indeed, Phoenix Fire Department Standard Operating Procedure 205.08 provides "[i]t is the responsibility of the driver of each Fire Department vehicle to drive safely and prudent at all times."³ Moreover, Phoenix Fire Department vehicles are to be operated in compliance with the Arizona Motor Vehicle Code.⁴ The City of Phoenix, Phoenix Fire Department, and its employee(s)/driver at the time of the subject incident breached that duty, and in doing so their negligence resulted in the deaths of three members of the Phoenix community.

To date, Claimant remains unable to obtain a report or any investigative information from the Phoenix Police Department about the subject incident. As such, it is unknown: (1) whether the Fire Truck involved in the subject incident was responding to an emergency; (2) if such is the case, what "Code" any such emergency was; and (3) whether the Fire Truck involved in the subject

¹ See News Conference Announcing Appointment of Kara Kalkbrenner as Phoenix Fire Chief, November 11, 2014, available at <https://www.youtube.com/watch?v=64ENIHTV6fo&t=624s>.

² See Fire Station Locations and Apparatus, available at <https://www.phoenix.gov/fire/about-us/locations-and-apparatus>.

³ See Phoenix Regional Standard Operating Procedures, Driver Safety, available at <https://www.phoenix.gov/firesite/Documents/074788.pdf> (emphasis added).

⁴ *Id.*

incident was driving with its siren and/or lights flashing. However, even if the Fire Truck *was* responding to a Code 3 emergency with its lights and sirens on, Standard Operating Procedures dictate that the truck did not automatically have the right-of-way.⁵ The Fire Truck involved in the subject incident had a responsibility to drive defensively and be prepared for any unexpected actions of other drivers on the road.

As intersections present the greatest danger, when a Fire Department vehicle is approaching or crossing an intersection, drivers shall not speed. Fire Department vehicles may only exceed the posted speed limit when they are responding to a Code 3 and only under "favorable conditions." Fire Department Vehicles may not exceed 10 mph over the posted speed limit.⁶ Simply put, "Phoenix Fire Department vehicles shall be operated in a manner that provides for the safety of all persons and property."⁷

This is a tragedy that could have and should have been avoided. The City, Fire Department, and its employee(s)/driver were fully aware of the hazards and dangers presented with driving emergency vehicles on public roads. A potential violent collision with a negligently-driven fire truck weighing 20-30 tons was foreseeable. Presumably, this is why an entire section of the Standard Operating Procedures is dedicated to safe driving. The City, Fire Department, and its employee(s)/driver failed to comply with their duty and responsibility and, in doing so, caused these three deaths. Had the Phoenix Fire Department employee(s)/driver been operating the Fire Engine in a safe and responsible manner, this collision would not have occurred.

Damages

The pain and anguish that [REDACTED] has endured thus far – and will continue to endure for the rest of her life – for the loss of her daughter is immeasurable. She left her daughter that morning expecting to see her later that evening. She did not get to say goodbye to [REDACTED]. They were taken from her. [REDACTED] herself is only [REDACTED]. She lost decades' worth of future care, companionship, guidance, support, and love from her daughter. She has been unable to return to her job as a housekeeper for St. Joseph Hospital for over two months, struggling to support herself and her other children.

[REDACTED] was [REDACTED]'s first-born child and only daughter. A [REDACTED] she raised [REDACTED] and [REDACTED] on her own. [REDACTED] was born in Phoenix and lived there her entire life. She saw her mother nearly every day and they lived together as recently as last year. [REDACTED] was a healthy, kind, and thoughtful young woman with a full life ahead of her. She recently celebrated her [REDACTED] and gave birth to her first child only [REDACTED] before this horrific crash. The morning of the crash and before it happened, [REDACTED] went to visit her mother and bring her some family heirlooms. That is the last moment [REDACTED] shared with her daughter. [REDACTED] lost her only daughter forever.

[REDACTED] knew, as she aged, [REDACTED] would be there for financial and emotional support, guidance, comfort, and protection. The pain, grief, sorrow, anguish, stress, shock, and mental suffering [REDACTED] has experienced from this will continue for the rest of her life.

⁵ *Id.*

⁶ *See id.* (providing "Emergency Response Criteria" requiring "Maximum 10 mph over posted speed limit.").

⁷ *Id.*

[REDACTED] was a smart and industrious person who clearly was going to command a good salary and financial comfort that would have been to [REDACTED] benefit. Instead, [REDACTED] is left with [REDACTED] forthcoming hospital bill and headstone cost. These enormous losses support the settlement demand outlined below.

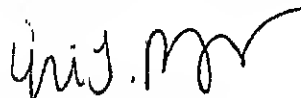
Specific Amount for Which This Claim May Be Settled

Pursuant to the requirement in A.R.S. § 12-821.01(A), [REDACTED] has authorized us to settle her claims regarding [REDACTED] claims relating to the death of her [REDACTED] with the City of Phoenix, Phoenix Fire Department and its employee(s)/driver for \$25,000,000.00 in exchange for a complete release of all claims. This offer is open for 60 days, pursuant to A.R.S. § 12-821.01(E), after which it automatically expires unless agreed otherwise in writing.

We intend for this letter to serve in tandem with the enclosed Claim Form to provide the City of Phoenix with as much information as possible so that it can properly evaluate [REDACTED] claims with respect to the death of her daughter. As noted above, we will also be sending a separate letter and Claim Form for claims related to [REDACTED]

Please let us know if there is any additional information we can provide. We look forward to hearing back from you.

Regards,



Mikal Watts
Erin Rogiers
WATTS GUERRA, LLP

Gregory Gowan
GOWAN ELIZONDO LLP

Mail or Fax Form to:

City of Phoenix
City Clerk Department
200 W. Washington Street, 15th Floor
Phoenix, AZ 85003
Fax: (602) 495-5847



**City of Phoenix
Claim Form**

This claim form is available in alternative formats upon request.
TTY (602) 534-5500

If more space is needed, please attach additional pages.

If you have any questions, please call the Risk Management Division at: (602) 262-5054

This claim form is provided to assist in presenting a claim against the City of Phoenix that complies with the requirements of Arizona Revised Statutes §12-821.01 which defines the requirements for filing a claim against a public entity in the State of Arizona.

The Statute requires, in part, that a claim against a public entity:

- Be filed with the City Clerk Department within **180 days** after the cause of action accrues,
- Contain **sufficient facts** to permit the public entity to understand the basis upon which liability is claimed,
- Contain a **specific dollar amount** for which the claim can be settled and the facts supporting the amount.
- In order to file suit against a public entity, a proper notice of claim must first be filed. A lawsuit must be filed within **one year** after the cause of action accrues.

FEDERAL REGULATION – BODILY INJURY CLAIMS ONLY

If you are presenting a bodily injury claim, you are required to provide the information requested in this section pursuant to Federal Law – Section 42, United States Code 1395y(b) (7) & (8). For additional information, go to www.cms.hhs.gov/MandatoryInsRep.

Injured party name: _____
(Show name exactly as it appears on Social Security records)

Injured party social security #: _____

Injured party gender: ☐ Male ☒ Female

Injured party date of birth: _____

Medicare, Medicaid (AHCCCS) or SCHIP Health Ins Claim #: _____

(HIGN if applicable)

Is the injured party eligible (or will he/she be eligible within the next 36 months) for Medicare, Medicaid (AHCCCS) or the State Children's Health Insurance Program (SCHIP)? ☒ Yes ☐ No

Please continue to the claim form below. Additional information is required.

1. CLAIMANT INFORMATION (complete a separate claim form for each person making a claim)

Claimant Name: _____

Name of claimant's representative (if applicable):

Erin Rogiers

Relationship to claimant:

☐ Parent (claimant is a minor) ☐ Guardian ☐ Insurance Company
☒ Attorney ☐ Other _____

Address: _____

Apt #: _____

City / State: _____

ZIP: _____

Date of birth: _____

Phone #s

Home: () _____

Work: () _____

Cell: () _____

602-503-3002

Which is the best daytime phone # to reach you? _____

Email address: _____@gmail.com

Fax #: () _____

2. OCCURRENCE OR EVENTS GIVING RISE TO THE CLAIM

Date of occurrence: April 7, 2019 Time: 9:15 ☒ A.M. ☐ P.M.

Location of occurrence: 29th Avenue and Bethany Home Road, Phoenix, AZ

Describe the specific facts of the occurrence, event, act or omissions that you believe caused your injury or damage and for each theory of liability, explain why you believe the City of Phoenix is at fault.

Please see additional page, attached hereto.

List all witnesses, including name(s), address and phone number.

_____; Other Phoenix FD Employees that were riding in the truck driven by _____

Identities unknown at this time; Other Phoenix FD employees that were riding in or driving a second Phoenix FD truck near the collision;

Identities unknown at this time.

Did this occur in a construction area?

☐ Yes

☒ No

If yes, what is the construction company's name? _____

If this is a motor vehicle accident, please provide the following information:

The vehicle in which _____ was a passenger was owned by _____

Your vehicle license plate number: _____ State No. is _____

Your vehicle: Year: _____ Make: _____ Model: _____

Name of the City driver: Upon information and belief, Phoenix FD Employee _____

City Vehicle Description: Fire Truck/Fire Engine City Department: Phoenix Fire Department

City Vehicle License Plate #: Unknown

Bus/Equipment #: _____

Bus Route Name/Number: n/a

Direction of Travel: Westbound

Was a police report filed? ☒ Yes ☐ No If yes, what agency responded?

Unknown; Upon information and belief, Phoenix Police Department

Police report number: Unknown at this time.

2. Describe the specific facts of the occurrence, event, act or omissions that you believe caused your injury or damage and for each theory of liability, explain why you believe the City of Phoenix is at fault.

On April 7, 2019, [REDACTED] was driving his vehicle on Bethany Home Road in Phoenix, Arizona with his girlfriend, [REDACTED] and their child, [REDACTED] in the car. At the same time, Phoenix Fire Department employees (whose names are unknown at this time) were driving a Phoenix Fire Department truck on the same road. Upon information and belief, the Phoenix Fire Department Engine involved in the subject incident was Engine No. 18 and the driver of the Engine was [REDACTED].

While we have yet to receive the police report or any investigative material from the Phoenix Fire Department or Phoenix Police Department, it is our understanding that the Phoenix Fire Department truck violently collided into [REDACTED] vehicle at or near the intersection of 29th Avenue and Bethany Home Road, causing the fire engine to roll several times and throwing the Decedents' vehicle across the road. [REDACTED] was pronounced dead at the scene, while [REDACTED] and their child were taken to separate hospitals, suffered for a period of time, and eventually passed away.

At this time, it is our clients' position and claim that the Phoenix Fire Department and its employee-driver of the fire engine involved in the subject incident were negligent and that negligence caused the deaths of these three individuals, and resulting injuries to their family members. This negligence includes, but is not limited to, failing to safely, prudently, and reasonably operate the fire truck, driving the fire truck at an unreasonably high rate of speed, violating the Arizona Motor Vehicle Code, failing to make any evasive action to avoid hitting the Decedents' vehicle, negligent hiring, retention, supervision, training and entrustment. Phoenix Fire Department and/or City of Phoenix is also liable under the theory of *respondent superior*, as the Phoenix Fire Firefighters involved in the subject incident, including [REDACTED] were in the course and scope of their employment and carrying out duties for the Phoenix Fire Department and the City of Phoenix.

4. Describe your personal injuries (if any) and the specific facts supporting the amount claimed. (Please attach all receipts, medical bills and other documentation related to the injury amount claimed.)

Wrongful death damages including: Headstone expense (not yet purchased); Medical bills (have not yet been received); Lost wages and benefits. [REDACTED] would have received; pain and suffering by [REDACTED] before her death, as she was taken to the hospital and lived for a period of time after the subject collision.

Claimant's individual damages including lost value of household services, loss of care, companionship, and guidance; lost wages; pain and suffering.

The pain and anguish that [REDACTED] has endured thus far – and will continue to endure for the rest of her life – for the loss of her daughter is immeasurable. She left her daughter that morning expecting to see her later that evening. She did not get to say goodbye to [REDACTED] or her grandson, [REDACTED]. They were taken from her. [REDACTED] herself is only [REDACTED] years old. She lost decades' worth of future care, companionship, guidance, support, and love from her daughter. She has been unable to return to her job as a housekeeper for St. Joseph Hospital for over two months, struggling to support herself and her other children.

[REDACTED] was [REDACTED] first-born child and only daughter. A single mother, she raised [REDACTED] and her two sons, on her own. [REDACTED] was born in Phoenix and lived there her entire life. She saw her mother nearly every day and they lived together as recently as last year. [REDACTED] was a healthy, kind, and thoughtful young woman with a full life ahead of her. She recently celebrated her [REDACTED] birthday and gave birth to her first child only three months before this horrific crash. The morning of the crash and before it happened, [REDACTED] went to visit her mother and bring her some family heirlooms. That is the last moment [REDACTED] shared with her daughter. [REDACTED] lost her only daughter forever.

3. AMOUNT OF CLAIM

Dollar amount requested to settle your entire **property damage** claim: \$ _____

Dollar amount requested to settle your entire **personal injury** claim: \$ 25,000,000.00

Dollar amount requested to settle your entire **other damages** claim: \$ _____

Total dollar amount requested to settle your entire claim: \$ 25,000,000.00

4. EXPLANATION OF DAMAGES

Describe the **damage to your property** (if any) and the specific facts supporting the amount claimed. *(Please attach all receipts and other documentation related to the damage amount claimed.)*

Describe your **personal injuries** (if any) and the specific facts supporting the amount claimed. *(Please attach all receipts, medical bills and other documentation related to the injury amount claimed.)*

Please see additional page, attached hereto.

Describe your **other damages** (if any) and the specific facts supporting the amount claimed. *(Please attach all receipts and other documentation related to the damage amount claimed.)*

By signing your name below, you certify that the information provided is true and correct to the best of your knowledge and belief.

The city's acceptance and subsequent processing of your claim is not a waiver of the city's right to object to the sufficiency of the claim and should not be considered as an acknowledgment by the City that the claim is valid. To the extent city records need to be preserved, you are directed to A.R.S. 39-121, et seq.

Claimant Name:

[Signature]
(Signature of Claimant)

Form Completed By:

Erin Rogers
(Print Name of Person Completing Claim Form for Claimant)

Phone Number:

210- [Redacted]
(Phone # of Person Completing Claim Form for Claimant)

Address:

[Redacted]
(Address of Person Completing Claim Form for Claimant)

Relationship to Claimant:

Attorney

Date:

July 3, 2019

PLEASE KEEP A COPY OF THE COMPLETED FORM FOR YOUR RECORDS

INSTRUCTIONS FOR FILING YOUR CLAIM

Arizona Revised Statute §12-821.01 requires that this form *must* be filed with the City Clerk Department. The City Clerk will accept this form if hand-delivered, mailed or faxed as described below, but it is your sole responsibility to confirm that the City Clerk has actually timely received the form.

1. If you choose to mail or deliver your completed form, please direct it to:

City of Phoenix
City Clerk Department
200 W. Washington Street, 15th Floor
Phoenix, AZ 85003

2. If you choose to fax your completed form, please fax it to the City Clerk Department at:

Fax # (602) 495-5847